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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA ADAM MARLATT,

Defendant and Appellant.

E066378

(Super.Ct.No. RIF114127)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed.

Susan Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Joshua Adam Marlatt appeals from the superior court's order denying his petition for resentencing under Penal Code section 1170.18. We affirm.

## **FACTS AND PROCEDURE**

On December 24, 2003, defendant and two codefendants entered a building at Nueva Vista High School with the intent to commit theft and a felony. On December 29, 2003, the People filed a felony complaint charging defendant with second degree burglary. (Pen. Code, § 459.) Defendant pled guilty as charged on January 12, 2004, and was placed on probation for 36 months.

On September 16, 2004, defendant admitted to violating his probation. The court modified and reinstated his probation. Defendant was ordered to serve 120 days in jail, with credit for 80 days served and 40 days of good time credits under Penal Code section 4019. On August 2, 2005, the court revoked defendant's probation and ordered him to serve 16 months in prison, concurrent with all other custody time, including 16 months for possessing methamphetamine. (Health & Saf. Code, § 11377.)

On May 3, 2015, defendant filed a petition for resentencing under Penal Code section 1170.18. The People filed a response, arguing defendant was not eligible for resentencing because the high school was not a "commercial establishment." The superior court denied the petition on the ground that "459 was of high school—not commercial establishment. See count 1 of complaint."

This appeal followed.

## **DISCUSSION**

Upon defendant's request, this court appointed counsel to represent him in this appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the

case, a summary of the facts and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no error.

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RAMIREZ

P. J.

We concur:

MILLER

J.

CODRINGTON

J.